

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

)
TARGET DRILLING INC.,)
a Pennsylvania corporation,)
Plaintiff) CIVIL ACTION NO.
v.)
SOUTHERN COAL CORPORATION,)
a Delaware corporation and)
KENTUCKY FUEL CORPORATION,)
a Delaware corporation,)
Defendants.)

VERIFIED CIVIL ACTION COMPLAINT

Plaintiff, Target Drilling, Inc. (“Target”) by and through its counsel, files the following
Complaint, averring as follows:

I. INTRODUCTORY STATEMENT

1. This action is brought by Target, a Pennsylvania corporation that provides directional drilling and related services to the natural gas, oil and coal industries.
2. Defendants Southern Coal Corporation and Kentucky Fuel Corporation (collectively “Defendants”) contracted with Target to provide directional drilling services for

Defendants' coal mine, for which Defendants have failed to pay for the services provided by Target pursuant to the contract.

3. Through this action, Target seeks money damages and all other appropriate relief to compensate it for Defendants' failure to pay for the services provided pursuant to the contract.

II. JURISDICTION AND VENUE

4. Jurisdiction to adjudicate these claims is based upon diversity of citizenship pursuant to 28 U.S.C. §1332, since Target is a Pennsylvania corporation with principal offices located in Pennsylvania and Defendants are Delaware corporations with principal offices located in Virginia, and the amount in controversy exceeds \$75,000.00.

5. Venue is appropriate in this district pursuant to venue selection clause in the contract between the parties.

III. PARTIES

6. Target is a Pennsylvania corporation with principal offices located at 1112 Glacier Drive, Smithton, Westmoreland County, Pennsylvania 15479.

7. Defendant, Kentucky Fuel Corporation is a Delaware corporation with principal offices located at 302 S. Jefferson Street, Roanoke, Virginia 24011.

8. Defendant, Southern Coal Corporation is a Delaware corporation with principal offices located at 302 S. Jefferson Street, Roanoke, Virginia 24011.

IV. FACTS

9. On or about March 30, 2013, Target submitted a Cost Estimate for Directional Drilling One (1) and One (1) Branch Abandon Mine Verification (AMV) in the estimated total amount of \$95,278.00 to Defendants (the "Contract").

10. On or about April 15, 2012, Defendants accepted the Contract and issued Purchase Order No. KU1140 to Target.

11. The Contract was executed by Steve Ball, Director of Operations on behalf of the Defendants. A copy of the accepted and executed Contract is attached hereto as Exhibit A.

12. On or about April 24, 2013, Target commenced the work described in the Contract (the "Work").

13. During the period of time that Target performed the Work, Target provided daily cost updates and progress reports to Defendants' employees who supervised Target's activities.

14. At no time did any employee of Defendants object to the quality or cost of the Work provided by Target.

15. Target completed the Work on May 14, 2013.

16. On May 14, 2013, Target sent Invoice No. 245-001A in the amount of \$110,478.85 to Defendants for the Work performed pursuant to the Contract. A copy of Invoice No. 245-001A is attached hereto as Exhibit B.

17. Subsequent to sending Invoice No. 245-001A to Defendant, Target made numerous attempts to contact Defendants regarding payment.

18. On or about July 18, 2013, Target was contacted by A.J. Dudley, General Counsel of litigation and Risk Management for the Defendants ("Dudley").

19. Dudley requested that the amount due to Target from Defendants be compromised and settled for \$95,278.00.

20. Target declined Defendants' settlement offer and demanded payment in full of the amount due in three (3) equal installments of \$36,826.28.

21. After failing to receive payment, Target agreed to accept the sum of \$95,278.00 from Defendants as full settlement of the amount due, provided that such sum was received by Target from Defendants on or before Friday, August 2, 2013.

22. Defendants subsequently responded that they could only pay the agreed upon amount in two (2) installments over a thirty (30) day period.

23. Target thereafter requested that Defendants confirm such arrangement in writing, however, no such written confirmation has been received by Target from Defendants.

24. Defendants thereafter failed to respond to Target request for written confirmation and payment and have ignored Target's repeated requests for payment.

25. The amounts due and owing to Target from Defendants pursuant to Invoice No. 245-001A are fair and reasonable and are the amounts Defendant agreed to pay.

V. LEGAL CLAIMS

FIRST CAUSE OF ACTION – BREACH OF CONTRACT

26. The averments in paragraphs 1 through 25 are incorporated herein by reference as if the same were set forth in their entirety.

27. Cost Estimate for Directional Drilling One (1) and One (1) Branch Abandon Mine Verification (AMV) and the Purchase Order No. KU1140 constitute a valid contract between Target and Defendants.

28. As described above, Defendants have breached the terms of the Contract for failure to make payment for the amounts agreed upon pursuant to the Contract.

29. Defendants currently owe Target at least \$110,478.85.

30. Defendants have failed and refused to pay Target the debt owed.

SECOND CAUSE OF ACTION – UNJUST ENRICHMENT

31. The averments in paragraphs 1 through 30 are incorporated herein by reference as if the same were set forth in their entirety.

32. The services performed by Target pursuant to the Contract were performed for the benefit of Defendants, who own and operate the coal mine.

33. As a result of the services performed by Target for which no payment has been made, Defendants will be unjustly enriched, as said Defendants will be able to operate the coal mine and enjoy the financial benefits of such operations without remuneration to Target.

**THIRD CAUSE OF ACTION – VIOLATION OF THE CONTRACTOR AND
SUBCONTRACTOR PAYMENT ACT 73 Pa.C.S. §501, et seq.**

34. The averments in paragraphs 1 through 33 are incorporated herein by reference as if the same were set forth in their entirety.

35. The Pennsylvania Contractor and Subcontractor Payment Act, 73 Pa.C.S. §501, et seq. (“the Act”) is applicable to the Contract.

36. Defendants are “owners” or in the alternative, “contractors” as the term is defined in the Act. 73 Pa.C.S. §502.

37. Target is a “contractor” or in the alternative, a “subcontractor” as the term is defined in the Act. 73 Pa.C.S. §502.

38. Target has at all times performed in accordance with the Contract and is entitled to payment from Defendants.

39. Defendants have failed to pay as required under the Contract

40. Target has satisfactorily completed all work pursuant to the Contract and has at all times acted in good faith in performing its contract with Defendants who wrongfully withheld payment under the Contract.

41. Defendants have not claimed any deficiencies in Target’s work pursuant to §506 or §511 of the Act. 73 Pa.C.S. §506, §511.

42. Defendants' failure to fully pay Target, in accordance with the Contract is a violation of the Act. 73 Pa.C.S. §505, §507.

43. Target is therefore entitled, in addition to actual damages, to statutory interest, penalties and attorney's fees pursuant to the Act. 73 Pa.C.S. §505, §507, §512.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Target Drilling, Inc. respectfully requests that this Honorable Court:

1. Exercise jurisdiction over this action;
2. Award appropriate money damages;
3. Judgment in Target's favor and against Defendants, in the amount of \$110,478.85 plus 1% interest, plus 1% penalty, plus attorney's fees, plus costs as allowed under the Pennsylvania Contractor and Subcontractor Payment Act; and
4. Grant such other relief as may be appropriate, including reasonable attorneys' fees, litigation expenses and costs.

Date: August 27, 2013

Respectfully submitted,

/s/ Robert J. Wratcher
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Counsel for Plaintiff, Target Drilling Inc.

VERIFICATION

I verify that the statements made herein are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsifications to authorities.

Date: August 27, 2013

Don Kelle